



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBa0278/1
RPN:wlj:pg

**ASSEMBLY AMENDMENT 1,
TO 2005 ASSEMBLY BILL 91**

March 8, 2005 – Offered by Representative SHERIDAN.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 2: after “order” insert “, a state minimum wage, granting
3 rule-making authority, and providing a penalty”.

4 **2.** Page 2, line 1: before that line insert:

5 “**SECTION 1ab.** 49.141 (1) (g) of the statutes is amended to read:

6 49.141 (1) (g) “Minimum wage” means the state minimum hourly wage under
7 ~~ch. 104 s. 104.035 (1)~~ or the federal minimum hourly wage under 29 USC 206 (a) (1),
8 whichever is applicable.

9 **SECTION 1ac.** 104.01 (intro.) of the statutes is amended to read:

10 **104.01 Definitions.** (intro.) ~~The following terms as used in ss. 104.01 to~~
11 ~~104.12 shall be construed as follows~~ In this chapter:

12 **SECTION 1ad.** 104.01 (1) of the statutes is renumbered 104.01 (1m).

13 **SECTION 1am.** 104.01 (1d) of the statutes is created to read:

1 104.01 (1d) “Agricultural employee” means an employee who is employed in
2 farming, as defined in s. 102.04 (3).

3 **SECTION 1at.** 104.01 (5) of the statutes is amended to read:

4 104.01 (5) ~~The term “living-wage” shall mean~~ “Living wage” means
5 compensation for labor paid, whether by time, piecework, or otherwise, sufficient to
6 enable the employee receiving it to maintain himself or herself under conditions
7 consistent with his or her welfare.

8 **SECTION 1aw.** 104.01 (5g) of the statutes is created to read:

9 104.01 (5g) “Minor employee” means a minor who is paid at the applicable
10 minimum wage rate for minors.

11 **SECTION 1bb.** 104.01 (5m) of the statutes is created to read:

12 104.01 (5m) “Opportunity employee” means a person under 20 years of age who
13 is in the first 90 consecutive days of employment with his or her employer.

14 **SECTION 1bc.** 104.01 (7m) of the statutes is created to read:

15 104.01 (7m) “Tipped employee” means an employee who in the course of
16 employment customarily and regularly receives money or other gratuities from
17 persons other than the employee’s employer.

18 **SECTION 1bd.** 104.01 (8) of the statutes is amended to read:

19 104.01 (8) ~~The term “wage” and the term “wages” shall each mean~~ “Wage”
20 means any compensation for labor measured by time, piece, or otherwise.

21 **SECTION 1bm.** 104.02 of the statutes is amended to read:

22 **104.02 Living-wage prescribed Living wage required.** Every wage paid
23 or agreed to be paid by any employer to any employee, except as otherwise provided
24 in s. 104.07, shall be not less than a ~~living-wage~~ living wage.

25 **SECTION 1bt.** 104.03 of the statutes is amended to read:

1 **104.03 Unlawful wages.** Any employer paying, offering to pay, or agreeing
2 to pay any employee a wage lower or less in value than a ~~living-wage~~ living wage is
3 guilty of a violation of ~~ss. 104.01 to 104.12~~ this chapter.

4 **SECTION 1bu.** 104.035 of the statutes is created to read:

5 **104.035 Minimum wage. (1) EMPLOYEES GENERALLY.** (a) *Minimum rates.*

6 Except as provided in subs. (2) to (8), the minimum wage is as follows:

7 1. For wages earned before October 1, 2005, \$5.70 per hour.

8 2. For wages earned beginning on October 1, 2005, \$6.50 per hour.

9 (b) *Allowances for meals and lodging.* Except as provided in subs. (2) (b) and
10 (4) (b), if an employer furnishes an employee with meals or lodging in accordance
11 with rules promulgated by the department under s. 104.045 (2), the employer may
12 deduct the following amounts from the wages of the employee:

13 1. For lodging furnished before October 1, 2005, \$45.60 per week or \$6.50 per
14 day and for meals furnished before October 1, 2005, \$68.40 per week or \$3.25 per
15 meal.

16 2. For lodging furnished beginning on October 1, 2005, \$52 per week or \$7.40
17 per day and for meals furnished beginning on October 1, 2005, \$78 per week or \$3.70
18 per meal.

19 **(2) MINOR AND OPPORTUNITY EMPLOYEES.** (a) *Minimum rates.* Except as provided
20 in subs. (3) to (8), the minimum wage for a minor employee or an opportunity
21 employee is as follows:

22 1. For wages earned before October 1, 2005, \$5.30 per hour.

23 2. For wages earned beginning on October 1, 2005, \$5.90 per hour.

24 (b) *Allowances for meals and lodging.* Except as provided in sub. (4) (b), if an
25 employer furnishes a minor employee or an opportunity employee with meals or

1 lodging in accordance with rules promulgated by the department under s. 104.045
2 (2), the employer may deduct the following amounts from the wages of the employee:

3 1. For lodging furnished before October 1, 2005, \$42.40 per week or \$6.05 per
4 day and for meals furnished before October 1, 2005, \$63.60 per week or \$3 per meal.

5 2. For lodging furnished beginning on October 1, 2005, \$47.20 per week or \$6.75
6 per day and for meals furnished beginning on October 1, 2005, \$70.80 per week or
7 \$3.35 per meal.

8 **(3) TIPPED EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs. (4) to
9 (8), if an employer of a tipped employee establishes by the employer's payroll records
10 that, when adding the tips received by the tipped employee in a week to the wages
11 paid to the tipped employee in that week, the tipped employee receives not less than
12 the applicable minimum wage specified in sub. (1) or (2), the minimum wage for the
13 tipped employee is as follows:

14 1. For wages earned by a tipped employee who is not an opportunity employee,
15 \$2.33 per hour.

16 2. For wages earned by a tipped employee who is an opportunity employee,
17 \$2.13 per hour.

18 (b) *Allowances for meals and lodging.* If an employer furnishes a tipped
19 employee with meals or lodging in accordance with rules promulgated by the
20 department under s. 104.045 (2), the employer may deduct the applicable amounts
21 specified in subs. (1) (b) or (2) (b) from the wages of the tipped employee.

22 **(4) AGRICULTURAL EMPLOYEES.** (a) *Minimum rates.* Except as provided in subs.
23 (7) and (8), the minimum wage for an agricultural employee is as follows:

24 1. For wages earned by an adult agricultural employee, \$5.15 per hour.

25 2. For wages earned by a minor agricultural employee, \$4.25 per hour.

1 (b) *Allowances for meals and lodging.* If an employer furnishes an agricultural
2 employee with meals or lodging in accordance with rules promulgated by the
3 department under s. 104.045 (2), the employer may deduct the following amounts
4 from the wages of the employee:

5 1. For lodging furnished to an adult agricultural employee, \$41.20 per week or
6 \$5.90 per day and for meals furnished to an adult agricultural employee, \$61.80 per
7 week or \$2.95 per meal.

8 2. For lodging furnished to a minor agricultural employee, \$34 per week or
9 \$4.85 per day and for meals furnished to a minor agricultural employee, \$51 per week
10 or \$2.40 per meal.

11 **(5) CAMP COUNSELORS.** (a) *Minimum rates for adult counselors.* The minimum
12 wage for a counselor at a seasonal recreational or educational camp, including a day
13 camp, who is an adult is as follows:

14 1. For wages earned before October 1, 2005, \$215 per week if meals and lodging
15 are not furnished, \$164 per week if only meals are furnished, and \$129 per week if
16 both meals and lodging are furnished.

17 2. For wages earned beginning on October 1, 2005, \$270 per week if meals and
18 lodging are not furnished, \$217 per week if only meals are furnished, and \$171 per
19 week if both meals and lodging are furnished.

20 3. For wages earned beginning on October 1, 2006, \$315 per week if meals and
21 lodging are not furnished, \$240 per week if only meals are furnished, and \$189 per
22 week if both meals and lodging are furnished.

23 (b) *Minimum rates for minor counselors.* The minimum wage for a counselor
24 at a seasonal recreational or educational camp, including a day camp, who is a minor
25 is as follows:

1 1. For wages earned before October 1, 2005, \$175 per week if meals and lodging
2 are not furnished, \$133 per week if only meals are furnished, and \$105 per week if
3 both meals and lodging are furnished.

4 2. For wages earned beginning on October 1, 2005, \$225 per week if meals and
5 lodging are not furnished, \$171 per week if only meals are furnished, and \$135 per
6 week if both meals and lodging are furnished.

7 3. For wages earned beginning on October 1, 2006, \$275 per week if meals and
8 lodging are not furnished, \$209 per week if only meals are furnished, and \$165 per
9 week if both meals and lodging are furnished.

10 **(6) GOLF CADDIES.** The minimum wage for a golf caddy is as follows:

11 (a) For 18 holes, \$10.50.

12 (b) For 9 holes, \$5.90.

13 **(7) MINIMUM WAGE ESTABLISHED BY DEPARTMENT.** The department shall
14 promulgate rules providing the minimum wage for all of the following:

15 (a) An employee or worker with a disability covered under a license under s.
16 104.07.

17 (b) A student learner.

18 (c) A student employed by an independent college or university for less than
19 20 hours per week.

20 **(8) EMPLOYMENT EXEMPTED BY DEPARTMENT.** The department shall promulgate
21 rules exempting from the minimum wage requirements under subs. (1) to (7) all of
22 the following:

23 (a) A person engaged in casual employment in and around an employer's home
24 on an irregular or intermittent basis for not more than 15 hours per week.

1 (b) A person who resides with and who provides companionship and care, not
2 including practical or professional nursing, as defined in s. 441.001 (3) and (4), and
3 not more than 15 hours per week of general household work for an employer who, due
4 to advanced age or physical or mental disability, cannot care for his or her own needs.

5 (c) An elementary or secondary school student performing student work-like
6 activities in the student's school.

7 **(9) DEPARTMENT MAY REVISE.** The department may promulgate rules to increase
8 a minimum wage or an allowance for meals and lodging provided under subs. (1) to
9 (7).

10 **SECTION 1d.** 104.04 of the statutes is amended to read:

11 **104.04 Classifications; department's authority.** The department shall
12 investigate, ascertain, determine, and fix such reasonable classifications, and shall
13 impose general or special orders, determining the ~~living-wage~~ living wage, and shall
14 carry out the purposes of ~~ss. 104.01 to 104.12.~~ Such this chapter. ~~Those~~
15 investigations, classifications, and orders shall be made as provided under s.
16 103.005, and the penalties specified in s. 103.005 (12) shall apply to and be imposed
17 for any violation of ~~ss. 104.01 to 104.12~~ this chapter. In determining the ~~living-wage~~
18 living wage, the department may consider the effect that an increase in the
19 ~~living-wage~~ living wage might have on the economy of the state, including the effect
20 of a ~~living-wage~~ living wage increase on job creation, retention, and expansion, on
21 the availability of entry-level jobs, and on regional economic conditions within the
22 state. The department may not establish a different minimum wage for men and
23 women. ~~Said~~ Those orders shall be subject to review in the manner provided in ch.
24 227.

1 **SECTION 1e.** 104.045 of the statutes is renumbered 104.045 (intro.) and
2 amended to read:

3 **104.045 ~~Tipped employees~~ Tips, meals, lodging, and hours worked.**
4 (intro.) The department shall ~~by rule determine what amount of~~ promulgate rules
5 governing all of the following:

6 **(1)** ~~The counting of tips or similar gratuities may be counted~~ toward fulfillment
7 of the employer's obligation under this chapter.

8 **SECTION 1f.** 104.045 (2) and (3) of the statutes are created to read:

9 104.045 **(2)** The deduction of meals or lodging provided by an employer to an
10 employee from the employer's obligation under this chapter.

11 **(3)** The determination of hours worked by an employee during which the
12 employee is entitled to a living wage under this chapter.

13 **SECTION 1g.** 104.05 of the statutes is amended to read:

14 **104.05 Complaints; investigation.** The department shall, within 20 days
15 after the filing of a verified complaint of any person ~~setting forth~~ alleging that the
16 wages paid to any employee ~~in any occupation~~ are not sufficient to enable the
17 employee to maintain himself or herself under conditions consistent with his or her
18 welfare, investigate and determine whether there is reasonable cause to believe that
19 the wage paid to ~~any~~ the employee is not a ~~living-wage~~ living wage.

20 **SECTION 1h.** 104.06 of the statutes is amended to read:

21 **104.06 Wage council; determination.** If, upon investigation, the
22 department finds that there is reasonable cause to believe that the wages paid to any
23 employee are not a ~~living-wage~~, it living wage, the department shall appoint a wage
24 council, selected so as fairly to represent employers, employees, and the public, to
25 assist in its investigations and determinations. The ~~living-wage~~ department may

1 use the results of an investigation under this section to establish a living wage. A
2 living wage so determined upon shall be the ~~living-wage~~ living wage for all
3 employees within the same class as established by the ~~classification of the~~
4 department under s. 104.04.

5 **SECTION 1i.** 104.07 (1) of the statutes is amended to read:

6 104.07 (1) The department shall ~~make~~ promulgate rules and, except as
7 provided under subs. (5) and (6), grant licenses, to any employer who employs any
8 employee who is unable to earn the ~~living-wage~~ therefore determined upon,
9 ~~permitting such person to~~ a living wage so that the employee may work for a wage
10 ~~which shall be~~ that is commensurate with the employee's ability and each. Each
11 license so granted shall establish a wage for the licensee employees of the licensee
12 who are unable to earn a living wage.

13 **SECTION 1j.** 104.07 (2) of the statutes is amended to read:

14 104.07 (2) The department shall ~~make~~ promulgate rules and, except as
15 provided under subs. (5) and (6), grant licenses to sheltered workshops to permit the
16 employment of workers with disabilities who are unable to earn the ~~living-wage~~ at
17 a living wage so that those workers may work for a wage that is commensurate with
18 their ~~ability~~ abilities and productivity. A license granted to a sheltered workshop
19 under this section may be issued for the entire workshop or a department of the
20 workshop.

21 **SECTION 1k.** 104.08 (1) of the statutes is renumbered 104.08 (2m) and amended
22 to read:

23 104.08 (2m) ~~All persons~~ Any person working in an ~~occupation~~ a trade industry
24 for which a ~~living-wage~~ living wage has been established for minors, and who ~~shall~~

1 ~~have has no trade, shall, if employed in an occupation which is a trade industry, be~~
2 ~~indentured under the provisions of s. 106.01.~~

3 **SECTION 1m.** 104.08 (1m) (b) of the statutes is created to read:

4 104.08 (1m) (b) "Trade industry" means an industry involving physical labor
5 and characterized by mechanical skill and training such as render a period of
6 instruction reasonably necessary.

7 **SECTION 1n.** 104.08 (2) of the statutes is renumbered 104.08 (1m) (intro.) and
8 amended to read:

9 104.08 (1m) (intro.) ~~A "trade" or a "trade industry" within the meaning of ss.~~
10 ~~104.01 to 104.12 shall be a trade or~~ In this section:

11 (a) "Trade" means an industry occupation involving physical labor and
12 characterized by mechanical skill and training such as render a period of instruction
13 reasonably necessary. ~~The department shall investigate, determine and declare~~
14 ~~what occupations and industries are included within the phrase a "trade" or a "trade~~
15 ~~industry".~~

16 **SECTION 1pc.** 104.08 (3) of the statutes is renumbered 104.08 (3) (b) and
17 amended to read:

18 104.08 (3) (b) The department may make exceptions to the operation of subs.
19 ~~(1) and (2)~~ (1m) and (2m) where conditions make their application unreasonable.

20 **SECTION 1pm.** 104.08 (3) (a) of the statutes is created to read:

21 104.08 (3) (a) The department shall investigate, determine, and declare what
22 occupations and industries are included within a trade or a trade industry.

23 **SECTION 1q.** 104.10 of the statutes is amended to read:

24 **104.10 Penalty for intimidating witness.** Any employer who discharges or
25 threatens to discharge, or who in any way discriminates, or threatens to

1 discriminate, against any employee because the employee has testified or is about
2 to testify, or because the employer believes that the employee may testify, in any
3 investigation or proceeding relative to the enforcement of ~~ss. 104.01 to 104.12~~, is
4 guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of
5 ~~\$25~~ this chapter may be fined \$500 for each offense.

6 **SECTION 1rn.** 104.11 of the statutes is amended to read:

7 **104.11 Definition of violation.** Each day during which any an employer
8 ~~shall employ~~ employs a person for whom a ~~living-wage~~ living wage has been fixed
9 ~~established~~ at a wage less than the ~~living-wage fixed~~ established living wage shall
10 constitute a separate and distinct violation of ~~ss. 104.01 to 104.12~~ this chapter.

11 **SECTION 1rp.** 104.12 of the statutes is amended to read:

12 **104.12 Complaints.** Any person may register with the department a
13 complaint that the wages paid to employees for whom a ~~living-wage~~ living wage has
14 been established are less than that rate, and the department shall investigate the
15 matter and take all proceedings necessary to enforce the payment of a wage not less
16 than ~~the living-wage~~ a living wage. Section 111.322 (2m) applies to discharge and
17 other discriminatory acts arising in connection with any proceeding under this
18 section.

19 **SECTION 1s.** 234.94 (5) of the statutes is amended to read:

20 234.94 (5) "Primary employment" means work ~~which~~ that pays at least the
21 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
22 whichever is greater, offers adequate fringe benefits, including health insurance,
23 and is not seasonal or part time.

24 **SECTION 1t.** 234.94 (8) of the statutes is amended to read:

1 234.94 (8) “Target group” means a population group for which the
2 unemployment level is at least 25% higher than the statewide unemployment level,
3 or a population group for which the average wage received is less than 1.2 times the
4 minimum wage as established under ~~ch. 104 s. 104.035 (1)~~ or under federal law,
5 whichever is greater. No population group is required to be located within a
6 contiguous geographic area to be considered a target group.

7 **SECTION 1u.** 800.09 (1) (b) of the statutes is amended to read:

8 800.09 (1) (b) If the defendant agrees to perform community service work in
9 lieu of making restitution or paying the forfeiture, assessments, and costs, or both,
10 the court may order that the defendant perform community service work for a public
11 agency or a nonprofit charitable organization that is designated by the court.
12 Community service work may be in lieu of restitution only if also agreed to by the
13 public agency or nonprofit charitable organization and by the person to whom
14 restitution is owed. The court may utilize any available resources, including any
15 community service work program, in ordering the defendant to perform community
16 service work. The number of hours of community service work required may not
17 exceed the number determined by dividing the amount owed on the forfeiture by the
18 minimum wage established under ~~ch. 104 for adults in nonagriculture, nontipped~~
19 ~~employment s. 104.035 (1)~~. The court shall ensure that the defendant is provided a
20 written statement of the terms of the community service order and that the
21 community service order is monitored.”.

22 **3.** Page 2, line 1: delete “**SECTION 1w**” and substitute “**SECTION 1**”.

23 **4.** Page 2, line 9: after that line insert:

24 “**SECTION 1x.** 800.095 (4) (b) 3. of the statutes is amended to read:

1 800.095 (4) (b) 3. That the defendant perform community service work for a
2 public agency or a nonprofit charitable organization designated by the court, except
3 that the court may not order the defendant to perform community service work
4 unless the defendant agrees to perform community service work and, if the
5 community service work is in lieu of restitution, unless the person to whom the
6 restitution is owed agrees. The court may utilize any available resources, including
7 any community service work program, in ordering the defendant to perform
8 community service work. The number of hours of community service work required
9 may not exceed the number determined by dividing the amount owed on the
10 forfeiture, or restitution, or both, by the minimum wage established under ~~ch. 104~~
11 ~~for adults in nonagriculture, nontipped employment~~ s. 104.035 (1). The court shall
12 ensure that the defendant is provided a written statement of the terms of the
13 community service order and that the community service order is monitored.

14 **SECTION 1xx.** 895.035 (2m) (c) of the statutes is amended to read:

15 895.035 (2m) (c) The court assigned to exercise jurisdiction under chs. 48 and
16 938 may order that the juvenile perform community service work for a public agency
17 or nonprofit charitable organization that is designated by the court in lieu of making
18 restitution or paying the forfeiture or surcharge. If the parent agrees to perform
19 community service work in lieu of making restitution or paying the forfeiture or
20 surcharge, the court may order that the parent perform community service work for
21 a public agency or a nonprofit charitable organization that is designated by the court.
22 Community service work may be in lieu of restitution only if also agreed to by the
23 public agency or nonprofit charitable organization and by the person to whom
24 restitution is owed. The court may utilize any available resources, including any
25 community service work program, in ordering the juvenile or parent to perform

1 community service work. The number of hours of community service work required
2 may not exceed the number determined by dividing the amount owed on the
3 restitution, forfeiture, or surcharge by the minimum wage established under ~~ch. 104~~
4 ~~for adults in nonagriculture, nontipped employment s. 104.035 (1)~~. The court shall
5 ensure that the juvenile or parent is provided with a written statement of the terms
6 of the community service order and that the community service order is monitored.”.

7 **5.** Page 2, line 11: substitute “The treatment of section 800.095 (4) (b) 1. of the
8 statutes” for “This act”.

9 **6.** Page 2, line 12: after that line insert:

10 **“SECTION 3m. Effective dates.** This act takes effect on the day after
11 publication, except as follows:

12 (1) **MINIMUM WAGE.** The treatment of sections 49.141 (1) (g), 104.01 (intro.), (1),
13 (1d), (5), (5g), (5m), (7m), and (8), 104.02, 104.03, 104.035, 104.04, 104.05, 104.06,
14 104.07 (1) and (2), 104.08 (1), (1m) (b), and (2), 104.10, 104.11, 104.12, 234.94 (5) and
15 (8), 800.09 (1) (b), 800.095 (4) (b) 3., and 895.035 (2m) (c) of the statutes, the
16 renumbering and amendment of sections 104.045 and 104.08 (3) of the statutes, and
17 the creation of sections 104.045 (2) and (3) and 104.08 (3) (a) of the statutes take effect
18 on the first day of the 3rd month beginning after publication.”.

19 **(END)**